

EXHIBIT 18-6

1 submitted to the jurisdiction. I mean, there is no evidence of that ...

2 MR ROSEN: Well there's a short point on this, a short way round, which is our telling
3 your Lordship, and if necessary telling the Judge, that we will not contend, that by
4 complying and attending the deposition in London next week, at which the
5 representatives of the group will be asking these executives the questions which
6 they're obliged to give us, we will not suggest that that is a submission to the New
7 York jurisdiction which will leave them completely clear for the purposes of their
8 arguments and its aftermath.

9 MR JUSTICE STEEL: Well I - I have to say ...

10 MR ROSEN: I mean it sounds such a ...

11 MR JUSTICE STEEL: ... the situation then becomes almost meaningless really. But
12 anyway, okay.

13 MR ROSEN: Well it doesn't because it means we can get the information which we
14 believe we need to protect our business.

15 MR JUSTICE STEEL: Right.

16 MR ROSEN: That's the key point. This isn't about evidence for a future New York trial.

17 MR JUSTICE STEEL: That's right.

18 MR ROSEN: This is about obtaining urgently answers and documents in response to the
19 questions we've been asking since 5 April.

20 MR JUSTICE STEEL: In response to an order of the Court.

21 MR ROSEN: In response to an order of the Court. I concede that.

22 MR JUSTICE STEEL: As I say I, I don't think it matters. I am finding it very difficult to
23 comprehend how you could sit down solemnly and depose, be deposed, and then
24 say you have not submitted to the jurisdiction. Extraordinary.

25 MR ROSEN: Because you comply whilst making your jurisdiction application and without
26 prejudice to your jurisdiction application, and if you succeed then you succeed.

1 MR JUSTICE STEEL: And then what?

2 MR ROSEN: Well... the short answer is ...

3 MR JUSTICE STEEL: ...there is no - there is nothing left in the case. So it does not
4 matter then.

5 MR ROSEN: Well there are still arguments about obligations ... breaches of obligations
6 under the plan ...

7 MR JUSTICE STEEL: Well there may be arguments about returning of notice and so
8 on...

9 MR ROSEN: Yes.

10 MR JUSTICE STEEL: We are not really interested in £70,000. You are interested in
11 whether there is a very substantial claim.

12 MR ROSEN: Well, it's stick and carrot.

13 MR JUSTICE STEEL: Yes.

14 MR ROSEN: We want the information. We want to protect our business and part of that
15 is the bonus. Part of it is the duty ...

16 MR JUSTICE STEEL: Well he keeps saying he hasn't got the money, I mean £70,000. It's
17 peanuts really. Who cares?

18 MR ROSEN: But the only comfort I believe I can offer - I can't think of any other
19 mechanism - is that we won't take the point that complying with the order without
20 prejudice to the jurisdiction is itself submission to the jurisdiction.

21 MR JUSTICE STEEL: Yes.

22 MR ROSEN: So we won't be taking the point. It may be that your Lordship has in mind
23 some other mechanism. I don't know. I mean it may be that it's for us to devise
24 something that satisfies whatever concerns you have. I mean our main objective is
25 not to interfere with the New York Court's jurisdiction and to obtain the
26 information as soon as possible. We've been trying to get the information for two

1 months. We had to issue proceedings. We consider we did so in the appropriate
2 Court and now we've found ourselves bogged down in the jurisdiction fight when
3 in our respectful submission we'd get orders for the information in both
4 jurisdictions. The answer may be, I suppose, to get an order on the part of MSL, the
5 employer company, in England for exactly the same relief, so that if the New York
6 Court does ...

7 MR JUSTICE STEEL: Well for response to interrogatives, yes, maybe. But [inaudible]
8 and/or documents, depositions rather ...

9 MR ROSEN: Yes. Well, it may be that as far as the English Court is concerned you don't
10 go to war in examination as the first stage. The first stage is ask your questions and
11 get the answers in writing. Unfortunately we spent nearly, well, more than two
12 months on that stage. But I see your Lordship's point.

13 But really, in our respectful submission, if your Lordship makes an order
14 which has that impact on the New York proceedings then we would end up, I
15 suppose, having to sue - substantively - to sue here.

16 Of course there would remain the question of enforcing the order because
17 these Defendants are not presently in the United States. So the next box, so to
18 speak, on prejudice, is would we enforce in the meantime if they didn't attend.
19 They've got their appeal on, or at least they said they intend to appeal. Their stay
20 on their expedition for the jurisdictional challenge. And it may be the question of
21 enforcement pro tem would remain in the air. There is nothing we could do in the
22 sense that they're not in the United States, they're here. So the only way we're
23 actually going to be enforcing is getting an order from the English Court. Now
24 that's part of our cross-application and it may be that we just don't reach that today.

25 Then the next key point is what would happen if they did attend in terms of
26 substance other than its effect on the New York order. We say that all it can do is

1 to reveal matters which assist us, the group, and their employing service company.
2 But it's not going to do anything to harm their legitimate rights. And of course your
3 Lordship could impose as a condition, if you were minded to refuse the relief, that
4 there would be some safeguard as regards the preservation of the information of
5 documents that we get as a result of the Court enforcement. I am not inviting your
6 Lordship to do that, but if your Lordship is seeing this matter and your Lordship
7 could impose some requirement as far as that is concerned... We invite your
8 Lordship simply to allow the matter to proceed so that we can obtain the
9 information of documents because it is likely to assist us and that really should be
10 the absolute key component. And the idea of harming legitimate rights, either as
11 regards proceedings here or in New York, in our respectful submission is far-
12 fetched.

13 That leaves I think some red herrings so to speak. First of all, the arguments
14 as to their not being obliged as a matter of contract, whether to the American
15 companies under the plan or to MSL as their employers, is not being run, so they're
16 not the same restraints of trade or unenforceability. So your Lordship has the
17 situation where the obligations are there for the purposes of this application.

18 They have run some arguments in the skeleton and the witness statement but
19 they're not pursued. But your Lordship could note that.

20 There are undoubted duties anyway in the way of duties of fidelity which
21 aren't in issue and as we said in this morning's skeleton, which your Lordship
22 certainly won't have had an opportunity to read, that would extend to their
23 providing information in answer to our reasonable directions. And we cite *Hibbach*
24 *v Scientific*[?] on the duty of fidelity.

25 And your Lordship ought to know that the undertaking which has been
26 offered on 17 May, which I'll show your Lordship now, is going to get us nowhere.

1 That's in tab 7, page 24. And I've saved this till last so to speak for a reason your
2 Lordship will recognise I hope. At the bottom of the page, this is the undertaking
3 which they'd be prepared to recommend to the Defendant:

4 "I confirm my brief to remain an employee of Marsh Services Limited".

5 MSL. That's what they offer before the New York Court makes the order of
6 18 May and before they bring the anti-suit application on the basis that they are not
7 in fact in the employment contract with MSL. That's what they offer.

8 "Until 2 October with regard to my notice period as requested by the
9 company I undertake that while I remain an employee of the company I will abide
10 by my duty of good faith and fidelity to the company. I further undertake that during
11 the period of gardening leave I will not..." etcetera.

12 Now the problem with that, apart from scuppering the executives on their
13 claim that MSL is not their employer, the contract is not with them, is the
14 obligations of good faith and fidelity include the obligation to answer our
15 reasonable questions, and that they are absolutely not prepared to do. The
16 undertaking that was asked for on 5 April, just to show your Lordship that at page 2
17 of the same tab, 5(a), "strictly comply with your obligation to GC employee of the
18 director and in particular with the obligations referred to in the letter to you dated 3
19 April", which I don't think is in the bundle, "and the obligations set out in the
20 plan". And of course everyone knows by 17 May, when the counter offer comes
21 back, that the obligations in the plan include the duty, the express duty, to
22 cooperate.

23 I am not going to invite your Lordship to have close regard to what is
24 offered as regards information, which is just information going to solicitation of
25 immediate subordinates who reported on 3 April 2005 and confidential information.

26 That is another complete red herring.

1 Those are my submissions unless I can assist your Lordship any further.

2 MR JUSTICE STEEL: Yes.

3 MS BLANCHARD: My Lord, the hour grows late. I am proposing to be quite short.

4 Perhaps I'd better say what I want to say in reply and then we can see what time it is
5 and see how your Lordship wants to go forwards from there.

6 MR JUSTICE STEEL: Yes.

7 MS BLANCHARD: First of all my Lord, on the question of comity. It is not now and
8 never has been the law in this jurisdiction that before making an application for an
9 anti-suit injunction the Applicant must first discharge such avenues as are available
10 to them in the foreign Court. And in as much as Mr Rosen sought to persuade your
11 Lordship that that is the law, it is not.

12 Very quickly my Lord, in *The Angelic Grace*, that your Lordship has in
13 authorities, bundle 1 at tab 6... If your Lordship could turn that up. At page 96 in
14 the right hand column in the penultimate paragraph:

15 “In my judgement, where injunction is sought to restrain a party from
16 proceedings in a foreign Court in breach of an arbitration agreement the English
17 Court need feel no diffidence. Provided it is sought promptly and before the foreign
18 proceedings are too far advanced, I see no difference in principle between an
19 injunction to restrain proceedings which have breached an arbitration clause or have
20 breached an exclusive jurisdiction clause”.

21 Pausing there my Lord. Two points. Not only is it not the law that we have
22 to pursue every avenue open to us in New York. On the contrary. If we were to do
23 that and then bring our application for an anti-suit injunction here, it may be said
24 against us we had delayed unnecessarily. It may also be said against us that there is
25 some sort of issue estoppel or *res judicata* that arises out of any decision of the
26 New York Court. So we bring this application promptly, and we do so deliberately

1 and in accordance with authority.

2 And also my Lord, if your Lordship goes quickly forwards to tab 13 in this
3 bundle, at page 1102. One of the many decisions arising out of the *Metro* litigation
4 which I venture your Lordship might be familiar with.

5 MR JUSTICE STEEL: Yes. Sorry, page what?

6 MS BLANCHARD: Page 1102.

7 MR JUSTICE STEEL: Yes.

8 MS BLANCHARD: At page 42, and I'm showing your Lordship the judgement of Mr
9 Justice Moore-Beck at first instance, but none the worse for that. At paragraph 42
10 he says:

11 "Mr Gee sought to persuade me I should await the outcome of an
12 application by [inaudible] District Court to stay the proceedings on the grounds of
13 forum. In my view that was only likely to lead to further difficulty. Proceedings
14 before the District Court are at the earliest stage. If I am satisfied, and I am, that the
15 continued prosecution of those proceedings will be vexatious and abusive, it is far
16 better that I grant relief now than seek to act at a later stage."

17 Now he says, in terms, considerations of comity don't prevent us getting on
18 with it. So that is that point.

19 Secondly my Lord, also on the theme of comity, to some extent the
20 Defendants have brought this situation on themselves. They sought and obtained an
21 urgent order in the New York proceedings. They sought and obtained it on terms
22 that it has to be complied with before the jurisdictional challenge can be heard.
23 They have never offered to put off compliance with the order of 18 May pending
24 hearing of the jurisdictional challenge. And they're not offering that now. What
25 they're saying is, at twenty to four, as we get to the end of the hearing, Mr Rosen
26 says he can offer you some sort of comfort that if we arrive and be deposed the

1 Defendants won't take the point that thereby we're submitted to the jurisdiction.
2 Well my Lord it's far too late in the day for that offer to come now.

3 The point that we risk submission was, in our evidence, served over a week
4 ago. And if the Defendants wanted to make us a sensible offer on it they should
5 have done it before now because the position is, our advice is and the evidence is
6 that if we comply with the order of 18 May we risk a submission. I simply do not
7 know my Lord whether there is a way around that by agreement between the parties
8 in the way suggested by Mr Rosen or not. So what your Lordship cannot do is take
9 into account this sort of last minute last ditch sticking plaster sort of approach to
10 say, "Well I'm willing to offer you this and therefore you must arrive for your
11 deposition".

12 And the reality is my Lord, the evil of this situation, if there is one, is that
13 we have to comply before our jurisdictional challenge is heard. And the Defendants
14 have it within their power to change that state of affairs, and they've chosen not to.

15 Now my Lord, as regard what is and is not said for the various parties in the
16 New York proceedings, it's worth bearing this much in mind. Our evidence, as I've
17 said my Lord, was served over a week ago. The Defendants' evidence came in on
18 Friday in accordance with the timetable. We replied yesterday in accordance with
19 the timetable. And prior to Mr Rosen's submissions, notwithstanding that the way
20 in which the US proceedings are put has been at the forefront of our case from the
21 beginning, prior to Mr Rosen's submissions the only thing said about it was, "There
22 was an error".

23 What your Lordship has heard is a mixture of undertaking and evidence
24 from Mr Rosen as to how that happened and why that happened and what's going to
25 happen about it. And my Lord it is totally unsatisfactory to deal with it in that way,
26 orally on the hoof in circumstances in which they have a chance to put in evidence.

1 They haven't done it. Your Lordship has to go with what the evidence is, and the
2 evidence is, in America we're being sued as employees; Ms Mansfield says it's a
3 mistake - she doesn't say what the mistake is; and we do not know what this
4 corrective action is said to be going forwards and is meant to sort this out.

5 And there is my Lord a really rather more fundamental problem with it
6 because what your Lordship's heard from Mr Rosen is that your Lordship can forget
7 about what's happening in America because in England they're allowed to put their
8 case in any way they choose, and provided they can convince your Lordship that it's
9 not an employment contract on that basis your Lordship can ignore what's
10 happening in America. And to that end Mr Rosen seeks to orally re-write the
11 complaint, which is not an acceptable exercise.

12 But my Lord it goes further than that. If your Lordship goes back to, please,
13 the bonus agreement momentarily, which your Lordship will find beginning on
14 page 115. Now if your Lordship goes to page 118. Mr Rosen took your Lordship
15 to covenants 2(a) 1 and 2. And he sought to persuade your Lordship that what
16 'company' means in this context is MSL. Namely, it is the company within the
17 group by which he says the Claimants are employed. And my Lord that raises really
18 rather a fundamental problem because if your Lordship goes forward to 120, "and
19 either cooperation" provision, you see it says there:

20 "You will provide the company with such information as the company may
21 reasonably request."

22 Now the Defendants can't have it two ways my Lord. They can't say, "Oh,
23 in an earlier provision in the bonus contract 'company' means MSL but for the
24 purposes of the New York proceedings 'company' in little e means MMC and Guy
25 Carpenter". Because there are no two ways about it, and indeed it's fundamental to
26 what Mr Rosen had to say, that the obligation that is being enforced, one of them in

1 the New York proceedings is the cooperation provision. And if 'company' in this
2 sense means MSL one has to wonder my Lord why MSL are not party to the New
3 York proceedings, and why MMC and Guy Carpenter are bringing them at all.

4 So there is my Lord a fundamental inconsistency in the middle of my
5 learned friend's case which requires him to use whatever definition of 'company'
6 suits him as the case may be. And more importantly my Lord, if your Lordship
7 looks at the jurisdiction clause, at (n), which is on page 124:

8 "The company and you irrelatively submit the exclusive jurisdiction."

9 Once again my Lord, if that means MSL that is an agreement between us
10 and MSL but MSL aren't suing on it.

11 Mr Rosen sought to characterise my submissions about what 'company'
12 means in the context of this document, he says - his word, "absurd". But my Lord
13 that does not arise out of the construction that my clients seek to put on this
14 contract, but arises out of the construction that MMC and Guy Carpenter put on this
15 contract for the purposes of suing on it in New York. Because the fundamental
16 bottom line is that they say they are entitled to enforce the obligations arising under
17 this contract which must mean that they are casting themselves as being within the
18 definition of the expression 'the company'. And where that gets us, my Lord, we
19 invite your Lordship to find, is we're right back where we started, is that there are a
20 whole load of features about the bonus contract which are suggestive that it is a
21 contract of employment.

22 And my Lord on that specific point, the whole basis of my learned friend's
23 submissions is that there is 'a' contract of employment. As your Lordship knows,
24 that is not my clients' case. And nor indeed is there any rule that an employee can
25 only ever have one contract of employment. We do not say, and we have never
26 said, that MSL is not an employer for these purposes. What we say is that the

1 bonus contract is parasitic on - doesn't matter what you call it - on the bonus
2 contract and that in seeking to enforce them in the way that they are that Guy
3 Carpenter and MMC are casting themselves in the role of our employer. So it's
4 simply not right to say that Mr Rosen has some great point on the correspondence
5 that gives the lie to my case that we don't work for MSL because the truth is my
6 Lord we've never denied it.

7 And lastly, I think lastly my Lord ...

8 MR JUSTICE STEEL: Well sorry, the logical provision of this argument, which is an
9 important one, is that the duty of cooperation is only owed to the employer.

10 MS BLANCHARD: Yes my Lord.

11 MR JUSTICE STEEL: Therefore, leaving aside the burden of standard of proof, the issue
12 arises as to whether in due course in the New York proceedings the Claimants are
13 then in a sense entitled to sue.

14 MS BLANCHARD: Yes my Lord.

15 MR JUSTICE STEEL: Well where does that get us on this application?

16 MS BLANCHARD: Where it gets us on this application my Lord is this, is that Guy
17 Carpenter and MMC are suing on the bonus contracts. And they are doing so on the
18 basis that they are employers. Having done so, having elected to do so, and having
19 elected to do so against the background that my clients are in danger of having to
20 split in New York, then what ought to happen is an injunction should be granted to
21 restrain those proceedings and they can come into the jurisdiction here and we can
22 argue here about who has locus, who has title to sue under this agreement, which is
23 where that argument ought to take place.

24 And logically, if one takes Mr Rosen's argument to its natural conclusion,
25 that will never happen because all that will happen is that MSL will sue us in this
26 jurisdiction where we should be in their capacity as our employer. Because his

1 case, as I understand it, is that 'the company' means MSL.

2 And my Lord there's another fundamental problem. The terms of ...

3 MR ROSEN: That isn't my case. It's that the company and the particular provisions of
4 clause 2 ...

5 MR JUSTICE STEEL: Well we will come to it in a minute Mr Rosen ...

6 MR ROSEN: ...which refer to ...

7 MR JUSTICE STEEL: ...I agree I do not think [inaudible]. I am sorry, it is your case that
8 the employer is MSL.

9 MR ROSEN: Yes. Yes. But my learned friend is suggesting that that's my case for the
10 purposes of clause 2(e), and it certainly isn't.

11 MS BLANCHARD: Well my Lord there's a very interesting point. How can an
12 expression which is defined have different meanings depending on which provision
13 you're looking at? Because that is the effect of what Mr Rosen says.

14 But anyhow my Lord, the bottom line of all of that is this, is can your
15 Lordship decide that my clients don't have a good arguable case that this matter
16 comes within Section 5 of the regulation? And can your Lordship decide that the
17 balance of convenience is against granting the order sought? And those my Lord
18 are the fundamental questions, bearing in mind that where we start with all of this is
19 that we say as a matter of public policy as employees we are entitled to be sued
20 here. And however you cut it my Lord, however one looks at it, the New York
21 proceedings are right out of our employment. However sophisticated arguments
22 one runs they are right out of the fact that we were employees.

23 MR ROSEN: Well look, just correct something my learned friend ...

24 MS BLANCHARD: My Lord I'd be very grateful if Mr Rosen - Mr Rosen's made his
25 submissions and I'm making my reply ...

26 MR ROSEN: [inaudible] the submission you've said I've made.

1 MS BLANCHARD: I'm making my reply submissions my Lord and it's now five past
2 four.

3 MR ROSEN: But if ...

4 MS BLANCHARD: His clients' undertakings expire in 25 minutes. I would invite him to
5 sit down.

6 MR ROSEN: No because it's important. On 2(a) my submission is, "whilst you remain by
7 the company" means whilst you remain employed within the group. I do not
8 suggest that 'company' should change and have different meanings. If it should
9 have different meanings ...

10 MR JUSTICE STEEL: Well since we have got you on your feet Mr Rosen, let me just ask
11 you this and I think I was going to ask you this anyway. I take your point that while
12 you remain employed by the company it means, you say, employed within the
13 group. 2(a). "Throughout the notice period the company shall have the obligation
14 to pay you the base salary". And I think you say that means the relevant company
15 in the group who is obliged to pay the salary.

16 MR ROSEN: It's all the group if the relevant company within the group who is obliged
17 doesn't pay it. That doesn't make the group the employer. The employee is an
18 employee of a service company which is within a group. Nothing in 2(a) or 22(a)
19 means that the group is the employer.

20 MR JUSTICE STEEL: Perhaps I - I think I am understanding. I know [inaudible] is
21 slightly different. [inaudible] what does company mean in 2(a). Does it mean ...

22 MR ROSEN: Well ...

23 MR JUSTICE STEEL: ...any company in the group or the relevant company?

24 MR ROSEN: Well the company is defined as essentially the entire group. That's the
25 definition in the agreement.

26 MR JUSTICE STEEL: [inaudible]

1 MR ROSEN: And what I was addressing your Lordship on is how clause 2 should be read

2 ...

3 MR JUSTICE STEEL: Yes I see.

4 MR ROSEN: Meaning when you know that you have employees who are employees of
5 service companies in different countries within the group, and the parent has a stock
6 incentive scheme for all those different senior executives. 2(a)1 means it's
7 employed within the group. 2(a) means the group will pay you salary in the same
8 way which will continue as other employees. So the group as a whole has all
9 different employees in all different service companies.

10 MS BLANCHARD: Well, however Mr Rosen dresses it up he is saying that you have a
11 different definition of company depending on which clause that you're looking at.
12 And certainly my note says that his submission was that 'company' means MSL for
13 some purposes and not for others. But the position is is that 'company' as a defined
14 expression it means the group entities within the group. And indeed it is for that
15 reason that both MMC and Guy Carpenter seek to be entitled to enforce the
16 obligations under the bonus contract. And indeed my Lord it is specifically Guy
17 Carpenter who is identified as being the Claimant's employer.

18 Now my Lord if 'the company' doesn't mean MSL for the purposes of (e),
19 or indeed the exclusive jurisdiction clause, then it doesn't mean it for the purposes
20 of other provisions of the contract. It would be an extraordinary contract my Lord if
21 such companies as within the MMC group as choose to could decide on a whim to
22 seek to enforce any particular provision of the agreement.

23 My Lord, where all of that gets to at the end of the day we invite Your
24 Lordship to find that there is a good arguable case in the sense of a serious issue to
25 be tried that my clients are right. The only party in this case who is at risk of
26 irremediable prejudice is my clients. Not the defendants. And for that reason, the

1 balance of convenience is in favour of granting the injunction. I don't want to take
2 a lot of time with this, but Mr Rosen has sought to categorise my clients' conduct as
3 seeking to avoid compliance with their obligations in some way. We don't accept
4 that as a proper assessment of the way that we have behaved. There are issues
5 between the parties as to what the proper scope of our obligations may be said to be.
6 I'm not asking Your Lordship to rule on them today but on any view we say if,
7 which is what the defendants have said contingently they would do if Your
8 Lordship grants the injunction, if the claimants start here they can make an
9 application here for such relief as they think they are entitled to and it can be
10 adjudicated on in due course, and that there are issues between the parties is the
11 scope of those obligations is neither here nor there, but I ought to record My Lord
12 that we do not accept Mr Rosen's fundamental premise that they are entitled to ask
13 us anything they like and that we are obliged to answer it. And My Lord, I ought to
14 say as well, that the position is that whilst Mr Rosen says if they come here they'll
15 be asking Your Lordship to make exactly the same Order, Your Lordship will know
16 that he wouldn't certainly, at minimum, would not have power to order aural
17 depositions and that is one of the grounds that we rely on in the New York
18 proceedings as being vexatious, unconscionable or oppressive. So it's simply not
19 the case that the two would stand or fall together. And at the end of the day My
20 Lord it is the defendants who have procured for themselves an Order which in
21 substance involves the claimants having to comply with the cooperation clause
22 before any questions as its validity can be determined, and that My Lord we say is
23 not appropriate.

24 MR JUSTICE STEEL: Yes.

25 MS BLANCHARD: And those would be issues for, if the matter comes here, those would
26 be issues for trial. My Lord, I'm conscious it's ten past four.

1 MR JUSTICE STEEL: So am I.

2 MS BLANCHARD: I'm in Your Lordship's hands as to what he wants to do now at ...

3 MR JUSTICE STEEL: Well I want to finish. Indeed, I've got to finish, because I've got to
4 go and read tomorrow's case yet. Where have we got to? I think the only option I
5 think open to me is to try and give an extempore judgment, which will doubtless be
6 rather inadequate, but I see no alternative.

7 MS BLANCHARD: Well the alternative My Lord if you wanted to reflect on it ...

8 MR JUSTICE STEEL: Well I am not going to be able to return to it tonight or tomorrow,
9 or Friday - or next week.

10 MS BLANCHARD: My Lord, I'm in Your Lordship's hands. The alternative would be to
11 grant the Order for a short period or for the defendants to under, to extend their
12 undertakings but I understand them not to be willing to do that.

13 MR JUSTICE STEEL: Well I understand they are. Do you want to add anything Mr
14 Rosen?

15 MR ROSEN: Well My Lord, no, save, save that as far as the part of the Application which
16 goes to the 18th May Order is concerned ...

17 MR JUSTICE STEEL: Sorry, you mean the US Order?

18 MR ROSEN: Yes, the US. As far as that's concerned ...

19 MR JUSTICE STEEL: But your application[?] [inaudible]...

20 MR ROSEN: No. No. My learned friend seeks to restrain any steps in the US
21 proceedings which as I've already submitted to Your Lordship would stop us for
22 example finding submissions on the jurisdiction application, so the real urgency is
23 in relation to enforcement of the Order of the 18th May and our difficulty is that if
24 Your Lordship grants an anti-suit injunction against that we want to get on with the
25 English claim which is our cross-application which Your Lordship can't possibly
26 determine now.

1 MR JUSTICE STEEL: I thought your, I am sorry, I thought your cross- application, again
2 was in two parts ...

3 MR ROSEN: It is.

4 MR JUSTICE STEEL: ... one was to enforce the American Order ...

5 MR ROSEN: Yes, which Your Lordship's not going to get to today ...

6 MR JUSTICE STEEL: No.

7 MR ROSEN: Because there are issues on that?

8 MR JUSTICE STEEL: So, your cross-application is alive whether or not [inaudible].

9 MR ROSEN: It is but it all, it all depends on what Your Lordship does regarding an anti-
10 suit injunction concerning the 18th May Order. That's all I wanted to say.

11 I'm sorry to rise again, Your Lordship could just give a decision and
12 perhaps a reason or a main reason, but again it's entirely a matter for Your Lordship
13 because a decision would tell us what we need to know going forward at least on
14 that aspect.

15 MR JUSTICE STEEL: I am just going to chew that over as to when, well when are you
16 anticipating your cross-application is going to be heard?

17 MR ROSEN: Well, I mean we just seek to get it on as soon as we can.

18 MR JUSTICE STEEL: Right.

19 MR ROSEN: We hoped it could be heard at the same time as this Application, it's just not
20 possible?

21 MR JUSTICE STEEL: Well I am assuming that whatever my decision, it's [inaudible] to
22 turn up on the 13th May.

23 MR ROSEN: That might be right and until we get to our cross-application that might be
24 right and then I suppose one has to worry about one side or the other going to the
25 Court of Appeal. Right so I'm sorry I'm not in a position to assist Your Lordship
26 by just saying that it can wait because I don't believe it can but it may be that

1 there's some way ...

2 MR JUSTICE STEEL: Well there is not much point in my giving a decision without
3 reason, because you'll want to appeal it. Of course I eventually will give reasons
4 but the timetable does not fit in there.

5 MS BLANCHARD: My Lord, may I make two points. One is that the undertaking's
6 expire at half past four because that is the date to which, the time to which the
7 defendants are willing to give them. It's not at all apparent why, what the magic is
8 with half past four today, and it seems to us they could just as well extend them but
9 let's assume they're not willing to do that and they're not. As regards the cross-
10 application, then it will just have to come on as soon as it can be brought on,
11 assuming the defendants can convince listing that it's urgent and must come on. As
12 regards next Wednesday, My Lord it's not satisfactory for my clients to be left
13 hanging as it were. We do not wish to be in breach of an Order of the New York
14 Court. Equally, we do not wish to comply with it and submit and for those reasons
15 my Lord it is not very satisfactory to proceed on the basis that well nothing will
16 happen if we don't show up, because realistically, a choice needs to be made one
17 way or another. And with that My Lord, I suspect we're in Your Lordship's hands
18 but equally I don't disagree with Mr Rosen that if what Your Lordship wants to do
19 is to give a decision, indicate what the decision is and give reasons later, although
20 that's perhaps not the most ideal way forwards, that may be all that realistically
21 there is time to do.

22 MR ROSEN: I don't know whether, whether this will help and I say it for myself, I'm not
23 saying it for my client, the cross-application is urgent which is why the Judge
24 ordered it to come on at the same time if possible, and if we're going to have the
25 positions next week then we do need the documents in advance of the depositions
26 and the documents are waiting with Elborne Mitchell because that was their

1 undertaking over until today. There may be an answer. If Your Lordship was with
2 my learned friends on part but not all of her Application and we had a decision on
3 the extent to which Your Lordship's going to grant or not grant it then we might be
4 able to work out some mechanism.

5 MR JUSTICE STEEL: Well, I'm not sure why, I mean... if I refuse an injunction it does
6 not follow as I understand it that documents are released to you...

7 MR ROSEN: No, because my learned friend is saying ...

8 MR JUSTICE STEEL: ..because they'll want to take the point that they're not obliged to.

9 MR ROSEN: Yes, my learned friend says they've gone to Elborne Mitchell, so that they're
10 ready ...

11 MR JUSTICE STEEL: Right.

12 MR ROSEN: ... but that does not mean...

13 MR JUSTICE STEEL: [inaudible] So in a sense it does not matter what my decision is as
14 regards the question of how to grapple either your application to make a single one
15 in English proceedings or alternatively to enforce the American [inaudible –
16 crosstalk].

17 MR ROSEN: Well for example Your Lordship could, and I'm not volunteering this, but
18 Your Lordship could order that we don't enforce the Order of the 18th May over
19 until you deliver judgment.

20 MR JUSTICE STEEL: Yes.

21 MR ROSEN: I'm not trying to suggest a timetable to Your Lordship, I'm really not, but in
22 the meantime Your Lordship may not make an Order which ...

23 MR JUSTICE STEEL: So you want to know whether in reality this court can offer, what,
24 another day to debate your cross-application.

25 MR ROSEN: I'd hope it would be less than a day. I don't know what my learned friend's
26 estimate is.

1 MR JUSTICE STEEL: Right. When have you been told that?

2 MR ROSEN: No, we ... I mean nothing is going to happen ...

3 MR JUSTICE STEEL: Well not before Wednesday that is for sure.

4 MR ROSEN: Not before Wednesday that's for sure. Beginning of July was the response
5 that we had last week.

6 MS BLANCHARD: My Lord, I do think it's fair to say life has moved on a bit since then
7 in a sense that we got Your Lordship because there was a change in the fixtures and
8 My Lord I do think it's right to say that it's not right that nothing will happen
9 realistically if Your Lordship either doesn't give a decision or doesn't make an
10 Order. If Your Lordship declines my Application, this afternoon in New York we
11 will receive a letter from the New York Attorneys saying "Please now immediately
12 comply ...

13 MR JUSTICE STEEL: Right.

14 MS BLANCHARD: ... with the obligation to provide documents and interrogatories".
15 That is what will happen.

16 MR JUSTICE STEEL: I'm sure it will.

17 MS BLANCHARD: And the proceedings will then, if Your Lordship's not minded to
18 make the Order, the proceedings will then have to proceed in the ordinary course. If
19 Your Lordship, the point that I was making rather more broadly is if Your Lordship
20 wants time to reflect on it, the right answer would be, we would say to prevent
21 injustice, would be to grant an injunction until Your Lordship gives judgment
22 thereby protecting the position of my client. But it is...

23 MR JUSTICE STEEL: No, I think the best I could do would be to seek an undertaking
24 from the defendants that they would not seek to enforce the American Order until I
25 have produced a written judgment. It may not, I fear, be for some time.

26 MS BLANCHARD: My Lord I don't know if that undertaking is on offer.